IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23829 of 2004

Between:

A. Narayana S/o Gangaram
Telephone Operator (Phones), Nizamabad

..... PETITIONER

AND

1. The Chairman, District Level Scrutiny Committee

and Joint Collector & Addl. district Magistrate,
Nizamabad District
2 District Collector and Magistrate Nizamabad,
3 Divisional Engineer Telecom (Admn)

Nizamabad, BSNL. O/o GMTD, Nizamabad District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction especially one in the nature of Writ of Mandmus (i) declare that District Level Scrutiny Committee and Joint Collector Nizamabad have no jurisdiction to cancel the caste certificate issued to me on 1-7-1978 in O. Ref B2/4415/78 of thasiladhar Armoor, and consequently set a side the said notice; (ii) to declare that under section 5 of the A.P. Sc. ST Bc regulation of issue of community certificate Act 1993 the jurisdiction vests only with the district Collector; and (iii) and to pass such other order or orders

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court at the admission stage, made the following :

THE HON'BLE MR JUSTICE K.C.BHANU

WRIT PETITION NO: 23829 of 2004

ORDER:

The present writ petition is filed to declare that the 1st respondent-District Level Scrutiny Committee and Joint Collector, Nizamabad, has no jurisdiction to cancel the Caste Certificate issued to the petitioner on 01-07-1978 and consequently set aside the notice No.C3/3439/2002, dated 06-12-2004 and also declare that the 2nd respondent-District Collector alone has jurisdiction to pass appropriate orders under Section 5 of the Andhra Pradesh (S.C., S.T., B.C.) Regulation of Issue of Community Certificate Act, 1993 (for brevity 'the Act').

2. The learned counsel appearing for the petitioner vehemently contended that the 1st respondent who issued the impugned notice dated 06-12-2004 has no jurisdiction under law to conduct an enquiry and to issue the impugned notice. The 2nd respondent alone is competent to conduct an enquiry and if the 2nd respondent *prima facie* satisfies, then he can refer the matter to the 1st respondent to conduct an enquiry, after giving reasonable opportunity to the petitioner, and therefore, the impugned notice is liable to be set aside.

3. The learned Government Pleader appearing for Social Welfare contended that in pursuance of the directions issued by this Court, the 1st

respondent issued notice dated
06-12-2004 to conduct an enquiry and after conducting the enquiry, the same shall be reported to the 2nd respondent. Thereafter, the 2nd respondent will pass appropriate orders under Section 5 of the Act.

4. It must however, be noted that under Section 5 of the Act, the District Collector is the competent authority to pass appropriate orders for cancellation of Caste Certificate. Under Rule 9 of the Regulation of Issue of Community Certificate Rules, 1997 (for brevity 'Rules, 1977'), it is clear that the District Collector receives a written complaint from any person or as otherwise has a reason to believe that a particular person does not belong to a particular community, he may refer the case to the Chairman, Scrutiny Committee i.e., Joint Collector of the District to enquiry into such case and send its findings to the District Collector. A procedure is contemplated under Rule 9 of Rules, 1977, with regard to the conducting of enquiry by the Scrutiny Committee. However, it may be reiterated that the power is also conferred on the 1st respondent-Joint Collector to conduct an enquiry.

5. The case of the petitioner is that for supplying the certain documents, the petitioner made a representation to the 1st respondent on 26-11-1990 but the 1st respondent without supplying the documents, issued show cause notice dated
31-11-1990 and subsequently passed orders dated
12-02-1991 cancelling the caste certificate. Questioning the proceedings dated 12-02-1991, the petitioner filed W.P.No.9569 of 1991 and the same was allowed on
30-09-1991 and again notices were issued to the petitioner. Then the petitioner filed another W.P.No.11756 of 1992, which was allowed on 25-09-1992, directing the respondents to furnish the copies of the documents. But the respondents, without hearing the petitioner and without furnishing certain documents to the petitioner, issued proceedings dated
22-02-1993 canceling the Caste Certificate. Aggrieved by the same, the

petitioner again filed W.P.No.3206 of 1993 to set aside the proceedings dated 22-02-1993. Ultimately this Court allowed the said writ petition on 28-10-2004, setting aside the impugned notice dated 22-02-1993 and directing the petitioner herein to present before the 1st respondent herein on 16-11-2004 and thereafter, the 1st respondent shall pass an order within one week. In pursuance of the directions given by this Court, the petitioner appeared before the 1st respondent on 16-11-2004 and filed a Memo, stating that the matter has to be referred to the 2nd respondent . Accordingly, the impugned notice dated 06-12-2004 have been issued, directing the petitioner to appear before the District Level Committee on 22-12-2004. Challenging the same, the present writ petition has been filed.

6. The contentions raised by the learned counsel for the petitioner herein were not raised before the learned Single Judge of this Court in the earlier writ petitions. Be that as it may, the finding of this Court in W.P.No.3206 of 1993, dated

28-10-2004 is that the 1st respondent-Joint Collector has to conduct enquiry.

7. If really the 1st respondent herein is not a competent authority to conduct an enquiry, the contention, advanced by the learned counsel for the petitioner before this Court that the 2nd respondent has to make a reference to the 1st respondent, should have been taken in the said proceedings, but the said contention has not been taken.

8. It is not in dispute that the 1st respondent is the competent authority to conduct an enquiry and thereafter his report has to be submitted to the 2nd respondent. After submitting the report by the 1st respondent, the 2nd respondent has to take appropriate action under Section 5 of the Act. Challenge to the proceedings dated 06-12-2004 issued by the Joint Collector in directing the petitioner to appear before him on 22-12-2004 is concerned, the petitioner herein filed a memo to the effect that the matter has to be referred to the 2nd respondent. When this Court directed the 1st

respondent to complete the enquiry and thereafter an order has to be passed within a week, the petitioner has to appear before the 1st respondent herein as per the directions of this Court. He cannot turn round and say that this matter has not been referred by the 2nd respondent. If the matter has not been referred to the 2nd respondent, then the petitioner should have taken the said plea in W.P.No.3206 of 1993. Therefore, the petitioner cannot be permitted to raise the said plea by filing present writ petition. The order of this Court has become final. In any view of the matter, holding of the enquiry by the 1st respondent cannot be said to be without his jurisdiction.

9. In the light of the above findings and conclusions, no case is made out to declare that the 1st respondent has no jurisdiction to conduct the enquiry. Hence, the writ petition is devoid of merits and is misconceived.

10. Accordingly, the Writ petition is dismissed without there being any order as to costs.

_____ December 21, 2004

Note:

Issue C.C. in seven days.

B/o.

KVR

TO

1. The Chairman, District Level Scrutiny Committee

and Joint Collector & Addl. district Magistrate,
Nizamabad District

2 District Collector and Magistrate Nizamabad,

3 Divisional Engineer Telecom (Admn)

Nizamabad, BSNL. O/o GMTD, Nizamabad District

4. Two C.Cs to the GP for Social Welfare, AP High

Court Buildings, High Court of AP, Hyderabad (O.U.T.)

4 Two C.D. Copies.